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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Petition of U S West Communications)
Inc. for a Declaratory Ruling) CC Docket No. 97-172
Regarding the Provision of National)
Directory Assistance)

REPLY COMMENTS OF SPRINT COMMUNICATIONS COMPANY, L.P.
ON U S WEST'S FURTHER SUBMISSION

Sprint Communications Company, L.P., ("Sprint") by its attorneys and pursuant to Rule 1.2, hereby files its reply comments in the above-captioned proceeding. Both AT&T and MCI have fully briefed the reasons why the Commission lacks the statutory authority to grant the requested relief, and Sprint will not reiterate in full these persuasive arguments. Because the Bell Company interests have served up so many variations as to how the FCC might find a loophole in its statutory obligations, Sprint confines this reply to a brief review of the guiding principles here.

The Commission should not lose sight of the controlling factors here. Section 271's prohibition against BOC in-region interLATA services is the crucial legislative means by which the national policy of local telephone competition can be achieved. As they did under the MFJ, the BOCs are now attempting to erode

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the line-of-business constraint by relentlessly testing its true bounds.¹ Sprint respectfully submits that the Commission's response should be to insist on compliance.

The offering and provision of a nationwide directory assistance service in the manner described by U S West is indeed an interLATA service. Quite simply, it is an interLATA service because it bundles together information along with transmission of the information across LATA boundaries. The FCC has had no difficulty recognizing services with these characteristics as interLATA services. See *Non-Accounting Safeguards Order*, 11 FCC Rcd 21905, 21966 at ¶ 126 (1996), recons. 12 FCC Rcd 2297 (1997) (explaining that a BOC may not bundle any information service with an in-region interLATA transmission component prior to 271 grant of in-region interLATA authority).

Given that NDA is interLATA, it cannot be offered by a Bell Company today unless it squarely fits under one of the statutory exceptions to the critical requirement of Section 271 approval. U S West and the other BOCs offer two main arguments here. First, U S West argues that NDA was "previously authorized" under the MFJ and thus is permissible under subsection 271(f). Second, it claims that the service qualifies under the

¹ See *United States v. Western Electric Co.*, 673 F.Supp. 525, 545 (D.D.C. 1987) (BOC waiver attempts described as effort to "nibble incessantly at the edges of the restrictions, in the expectation that this would result in their complete entry into the prohibited markets"). In fact, matters have become worse. The threat of criminal contempt under the consent decree at least tempered BOC conduct somewhat, prompting them to seek waivers no matter how baseless. Under the 1996 Act, apparently without fear of such sanctions, they are now undertaking the prohibited activities and then (sometimes) asking permission after the fact.

"incidental interLATA activities" exception, specifically 271(g)(4).

The first argument is frivolous. Either unaware of or indifferent to the FCC's ability to independently read MFJ decisions, the BOCs argue that Judge Greene already allowed interLATA national directory services. A review of the court decisions cited yields precisely the opposite conclusion.

Under the MFJ, the BOCs were allowed to provide *local* directory services to their local customers; any activity beyond this was ruled to require a waiver of the MFJ's line-of-business restrictions. *See United States v. Western Electric Co.*, Civ. Action No. 82-0192, slip op. at p.6 n.9 (D.D.C. Feb. 6, 1984). US West was granted a waiver to provide directory assistance to certain customers of independent telephone companies, but in no way was this waiver so broad as to permit non-local directory assistance. *See United States v. Western Electric Co.*, Civ. Action No. 82-0192 (D.D.C. Oct. 30, 1984). Indeed, the court expressly declined to extend the waiver to permit the provision of directory assistance to callers in states outside the BOC's region. *Id.* at p.5. The opinion also accepted the Justice Department's position, *i.e.*, that the BOC not be given authority to handle calls for directory assistance where the number sought would be outside the Numbering Plan Area of the calling party. *Id.* at 3-4. *See also United States v. Western Electric Co.*, 569 F.Supp. 1057, 1102 (D.D.C. 1983) (decision to give to AT&T and not to the BOCs the capabilities to offer 800 directory assistance

because "this particular directory assistance is an interexchange, interLATA service").

The Commission should not be misled by the BOCs' mischaracterization of this analysis: Sprint is not suggesting that this service is interLATA simply because the content of the information relates to interLATA telephone calls.² Rather, local directory assistance services were carved out of the class of prohibited businesses and treated as "official services" because the nature and function of the service was so closely identified with local telecommunications service. Once the information loses its pragmatic nexus to local telephone service, the basis for the carve-out collapses. See *United States v. Western Electric Co.*, Civ. Action No. 82-0192, slip op. at p.6 n.9 (D.D.C. Feb. 6, 1984) (interLATA directory assistance to customers of independent telephone companies are not official services but rather properly analyzed as a request for waiver of the line-of-business restrictions on long distance and information services). See also *United States v. Western Electric Co.*, Civ. Action No. 82-0192, 1989-1 Trade Cas. ¶ 68,400 (D.D.C. 1989) ("the Court has consistently interpreted the official services exception narrowly") *aff'd* 907 F.2d 160 (D.C.Cir. 1990).

U S West's NDA service fares no better under the rubric of "incidental interLATA services." We begin with the express rule of construction mandated by Congress in subsection 271(h), that

² As MCI correctly notes, however, this very fact strongly suggests the alternative analysis that NDA is itself part and parcel of interLATA services. See MCI Comments at pp.11-12 citing *United States v. Western Elec. Co.*, 627 F.Supp. at 1100, 1102, *appeal dismissed*, 797 F.2d 1082 (D.C. Cir. 1986)).

is, that the "incidental" exceptions of subsection 271(g) must be "narrowly construed" and in such manner as to avoid ratepayer harm and anticompetitive effects. Given these admonitions, it should be clear that U S West's eleventh hour effort to pass muster under subsection 271(g)(4) must also fail - a provision so lacking in relevance it didn't even occur to U S West to raise it until 8 months after its initial filing.

The pretext for raising subsection 271(g)(4) lies in the Commission's decision to forbear from regulating reverse directory assistance. Again, however, U S West and the other Bell Companies have failed to distinguish between *local* directory assistance provided from a centralized database and *national* directory assistance. The 272 *Forbearance Order* makes explicit the limited nature of the request sought. See *Bell Operating Companies Petitions for Forbearance from the Application of Section 272*, CC Dkt. No. 96-149, at ¶ 56 (rel. Feb. 6, 1998) (detailing BellSouth's proposed service as offering "directory information only for customers in the subscriber's numbering plan area").

The FCC's decision to treat reverse *local* directory assistance no differently than traditional *local* directory assistance is hardly surprising; reverse local directory assistance was indeed permitted under the MFJ (on a waiver basis) insofar as operator-assisted directory calls were involved. See *United States v. Western Electric Co.*, Civ. Action No. 82-0192 (D.D.C. Feb. 6, 1989) (reverse directory service waiver granted to Ameritech); *United States v. Western Electric Co.*, Civ. Action

No. 82-0192 (D.D.C. June 22, 1989) (me-too waiver granted to BellSouth). In its 272 *Forbearance Order*, the Commission in fact stated it need not make a specific determination as to whether the electronic reverse directory service was a "previously authorized" activity. In contrast here, no MFJ decision ever allowed *national* directory assistance -- reverse or traditional.

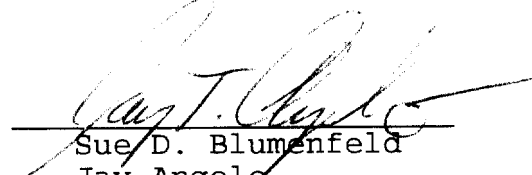
Further, the intervention of live operators in U S West's NDA service here makes the plain language of section 271(g)(4) unambiguously inapplicable. In light of the FCC's obligation to narrowly construe this provision, the language of (g)(4) cannot be extended and thus the "incidental" exception is simply unavailable to U S West.

Once the Commission concludes that the service is impermissible under section 271, the forbearance authority given to the FCC under section 10, by its terms, dissipates. That section, of course, prohibits the FCC from forbearing from the requirements of section 271. The Commission should promptly proceed to deny the petition, and further, to instruct all Bell

Companies to cease the offering of national directory assistance services.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Ann Fisher-Durrah do hereby certify that on this 23rd day of April, 1998, copies of the foregoing "Reply Comments of Sprint Communications Company, L.P. on U.S. WEST's Further Submission" were hand-delivered, unless otherwise indicated, to the following parties:

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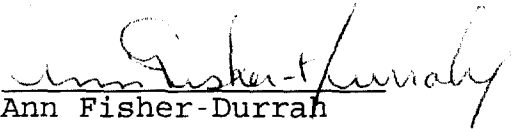
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